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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 PAUMA BAND OF LUISENO  
12 MISSION INDIANS OF THE PAUMA  
& YUMA RESERVATION,

13 Plaintiff,

14 vs.

15 STATE OF CALIFORNIA, et al.,

16 Defendants.

CASE NO. 09cv1955-CAB (MDD)  
ORDER DENYING PLAINTIFF'S  
*EX PARTE* MOTION TO  
COMPEL

[ECF NO. 193]

17 Background  
18

19 On May 18, 2012, the district court authorized the parties to engage in limited  
20 discovery for a period of sixty days. (ECF No. 182 at 40). Discovery was limited to  
21 written discovery and no more than three depositions. (*Id.*). Upon joint motion of the  
22 parties, this Court ruled on the permissible scope of discovery as follows:

- 23 1. Discovery may be obtained, during this period, to facts relating to  
24 whether or not the provisions of the 1999 Compact created a  
25 fiduciary relationship between the parties relating to the  
26 availability and distribution of licenses and, if so, the scope of that  
27 fiduciary relationship; and,  
28 2. Discovery may be had, during this period, into facts learned by  
Plaintiff that bear on when Plaintiff actually knew or should have  
known of facts relating to the improper calculation and  
distribution of licenses under the 1999 Compact.

(ECF No. 187).

1 On August 15, 2012, the Plaintiff filed an *Ex Parte* Motion to Compel Pursuant  
2 to Fed. R. Civ. P. 37(a) or 37(c)(1). (ECF No. 193). Defendants responded on August  
3 23, 2012. (ECF No. 195). Plaintiff seeks an order from the Court requiring  
4 Defendants to supplement their responses and production of documents arguing  
5 generally that the Defendants have not been entirely forthcoming. Plaintiff does not  
6 specifically identify any request and response. Nor does Plaintiff explain adequately  
7 why it did not avail itself of the joint motion requirements of this Court. See Civil  
8 Chambers Rules of Judge Dembin at section V subsection C. In addition to raising  
9 procedural errors in Plaintiff's motion, Defendants assert that the parties entered  
10 into an agreement regarding much of the disputed discovery which agreement is not  
11 even mentioned by Plaintiff. (ECF No. 195). As provided below, Plaintiff's motion is  
12 **DENIED.**

#### 13 Discussion

14 Defendants are correct that Plaintiff has not complied with the Civil Chambers  
15 Rules of this Court. Plaintiff does not provide adequate justification for proceeding  
16 with an *ex parte* motion. Plaintiff's rationale, that Defendants' position was hardened  
17 that no further documents would be forthcoming, and that the time provided for  
18 limited discovery was expiring is insufficient. The purpose of the joint motion is to  
19 provide the Court with everything it needs to resolve the motion at one time.  
20 Otherwise, as happened here, the Court must order and await a response from the  
21 opposing party. Proceeding *ex parte* delays a ruling. Had Plaintiff provided  
22 Defendants with the minimum of five days to participate in a joint motion, this  
23 motion would have been ripe on August 20. Moreover, the joint motion procedure  
24 serves to sharpen the issues and the parties' arguments.

25 Plaintiff also has not identified any specific disputed discovery request and  
26 response. Instead, Plaintiff complains of Defendants' overall approach to discovery in  
27 this case. There is no overarching legal issue involved, such as there was regarding  
28 the scope of discovery, which would obviate the need to identify specific requests and

1 responses. The Chambers Rules provide:

- 2 1. The Interrogatory, Request for Admission or Request for Production  
in dispute;
- 3 2. The verbatim response to the request or question by the responding  
party;
- 4 3. A statement by the propounding party as to why a further response  
should be compelled; and,
- 5 4. A precise statement by the responding party as to the basis for all  
objections and/or claims of privilege. Counsel would be wise to avoid  
6 boilerplate objections. Such objections are discouraged under the  
Federal Rules of Civil Procedure.

7 Dembin Civil Chambers Rules at section V, subsection C. These rules allow for the  
8 Court to address specific discovery disputes. Plaintiff's decision to ignore the rules  
9 has resulted in the Court having nothing specific to rule upon.

10 The Court also is perplexed by Plaintiff's decision to avoid discussing the  
11 impact of the discovery agreement between the parties. By its terms, the agreement  
12 seems to provide much of the relief requested by Plaintiff. (ECF No. 195-1 Exh. A).  
13 Specifically, the agreement contemplates that information not disclosed by certain  
14 dates cannot be relied upon by either party in connection with motions for summary  
15 judgment. Plaintiff, having chosen not to address the agreement at all, presented no  
16 argument that the agreement is in some manner deficient as it may pertain to the  
17 current dispute.


18 Regarding the general complaints of Plaintiff, there is simply insufficient  
19 information provided to decide whether Defendants' responses are adequate. To the  
20 extent that the arguments presented by the parties provide any insight, it does  
21 appear to the Court that Plaintiff is seeking substantially more than the limited  
22 discovery anticipated by the district court.

23 Conclusion

24 For the foregoing reasons, Plaintiff's motion to compel is **DENIED**.

25 IT IS SO ORDERED.

26 DATED: August 27, 2012

27   
28 Hon. Mitchell D. Dembin  
U.S. Magistrate Judge